16

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~455.~~ 239

THE UNITED STATES, APPELLANTS,

vs.

MAXIMILIAN A. DAUPHIN.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 30, 1870.

Dec. 1871

SUPREME COURT OF THE UNITED STATES.

No. 455.

THE UNITED STATES, APPELLANTS,

vs.

MAXIMILIAN A. DAUPHIN.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Traverse and pleas	4	2
Replication	5	3
Final judgment by the court	6	3
Application for an appeal	7	4
Order of court allowing same	7	4
Finding of facts and of law	8	4
Certificate	18	8

1 *Petition.*

U. S. Court of Claims.

MAXIMILIAN A. DAUPHIN }
vs.
THE UNITED STATES. }

To the honorable Court of Claims:

The petition of Maximilian Auguste Dauphin, a citizen of France, showeth:

That in the month of May, A. D. 1865, your petitioner was the owner and in possession of ninety-five bales of cotton, of the aggregate weight of forty-six thousand three hundred and forty-eight (46,348) pounds, then stored in the city of Mobile, in the State of Alabama; that about two weeks after the occupation of said city of Mobile by the United States forces, to wit, on the 15th of May, A. D. 1865, all of the said cotton was seized and taken possession of by the military forces of the United States, but without the consent of your petitioner, and against his will; that no part of the said cotton or its proceeds was appropriated in any way to the use of the Army or Navy of the United States, but the said cotton was turned over by the officer seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold, or the expenses attending its seizure, shipment, transportation, and sale, but he states on information and belief,

2 that the net proceeds thereof which have been paid into the Treasury amount to fifty cents per pound, or the aggregate sum of twenty-three thousand one hundred and seventy-four ($23,174) dollars.

Your petitioner further shows that his said cotton has never been abandoned or forfeited, or become liable to confiscation under any of the acts of Congress in that behalf made and provided; and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; that no proceedings for the purpose of condemning said cotton have ever been instituted in any court or before any tribunal.

Your petitioner avers that his property having been taken possession of by the United States Government and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor, by paying him all that said cotton was reasonably worth at the time and place it was so taken from him as aforesaid.

And your petitioner shows that said cotton, at the time and place of its seizure, was worth fifty cents per pound, or the aggregate sum of twenty-three thousand one hundred and seventy-four ($23,174) dollars, which amount he is entitled to receive from the United States under the implied contract, as stated above.

And your petitioner further shows that, if there has been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is nevertheless entitled to receive the net proceeds of it, amounting to the said sum of twenty-three thousand one hundred and seventy-four ($23,174) dollars, under the provisions of the third section of the act of Congress approved March 12, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and he prays the judgment of this honorable court for the said sum of twenty-three thousand one hundred and seventy-four, ($23,174) dollars, and for such other relief as the nature of his case may show he is entitled.

HUGHES, DENVER & PECK,
Claimant's Solicitors.

3 Frank Turk, being duly sworn, deposeth and saith that he is the agent of the claimant named in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein has been made except as in said petition stated; that claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

FRANK TURK.

Sworn and subscribed before me this 22d day of June, A. D. 1867.
[SEAL.] N. CALLAN,
Notary Public.

Claimant's address is
New Orleans, La.

Claimant's solicitors,
HUGHES, DENVER & PECK,
No. 528 G street, Washington, D. C.

4 In the United States Court of Claims, December term, A. D. 1866.

MAXIMILIAN A. DAUPHIN
vs.
THE UNITED STATES. } No. 2805.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $23,174 00, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

E. P. NORTON,
Solicitor for the U. S.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebel-

lion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

E. P. NORTON,
Solicitor for the U. S.

Dec. term, 1868.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth were made and done in the administration of, and in virtue and under color of, the act of Congress, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved March 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

5 United States Court of Claims. Dec. term, 1868.

MAXIMILIAN A. DAUPHIN
vs.
THE UNITED STATES. } 2805.

For a replication to the plea of alienage, being the second plea above specially pleaded, the plaintiff that he ought not to be barred of maintaining his said action by reason of anything alleged in said plea of alienage, because he saith that he is a citizen of France, and that the government of France, accords to citizens of the United States the right to prosecute claims against said Government in its courts.

Wherefore he prays that nothing in said plea contained shall be considered as a bar to this action.

HUGHES, DENVER & PECK,
Solicitors for Claimant.

6 In the Court of Claims.

MAXIMILIAN A. DAUPHIN
vs.
THE UNITED STATES. } 2805.

And now, to wit, 29th of November, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Maximilian A. Dauphin, claimant, have and recover of and from the United States the sum of seven-

teen thousand eight hundred and sixty-nine dollars ninety-five cents. ($17,869 95.)

By the court:

A true copy of record.

7 In the United States Court of Claims, Dec. term, 1869.

MAXIMILIAN A. DAUPHIN
vs.
THE UNITED STATES. } 2805.

From the judgment rendered in the above-entitled cause in favor of the claimant, the defendants, by their Attorney General, on the 29th day of November, 1870, make application for and give notice of an appeal to the Supreme Court of the United States; the amount in controversy therein exceeding three thousand dollars.

THO'S H. TALBOT,
Asst. Att'y Gen'l.

Filed in clerk's office, Nov. 29, 1870.

Ordered, that the appeal be allowed the case aforesaid, 2805, as prayed.

By the court:

DEC. 19, 1870.

8 In the United States Court of Claims.

MAXIMILIAN A. DAUPHIN
vs.
THE UNITED STATES. } No. 2805.

The finding of facts and the conclusions of law on said facts on which the court founded its judgment.

This cause coming on to be heard the 29th day of Nov., 1870, before all of the judges of the Court of Claims, the said court finds as matters of fact—

1st. That the claimant is, and at the time of the transactions hereinafter stated was, a subject of France, resident in the city of New Orleans.

2nd. That on the 12th April, 1865, he owned and possessed ninety-five bales of upland cotton, then stored in the city of Mobile, which was taken from his possession by the United States, and by them sold, and its net proceeds, amounting to the sum of seventeen thousand eight hundred and sixty-nine dollars and ninety-five cents, paid into the Treasury.

3rd. That the claimant never in any way voluntarily aided, abetted, or gave encouragement to rebellion against the Government of the United States.

9 4th. The civil judiciary of France consists of courts of the first instance, and of courts of appeal. The courts of first instance are of two classes, viz: "tribuneaux civils," and "tribuneaux administratifs." From the "tribuneaux civils" there is an appeal to the "cour imperiale," and thence to the "cour de cassation." From the "tribu-

neaux administratifs" there is an appeal to the "conseil d'état." All of these courts are judicial tribunals, and the jurisdiction of each is limited by law to certain subjects.

5th. There are several classes of "tribuneaux administratifs," from which an appeal may be taken before the council of state—"conseil d'état." The two main classes are: 1st. "conseils de préfecture," 2nd, "the executive departments."

6th. The administration of every "department" of France is thus organized. There is a prefect, and by him sits a "conseil de préfecture," the members of which are appointed by the executive. These "conseils de préfecture" decide in the first instance, merely on suits which are not submitted to the "cours civils," and from their decision there is almost always the possibility of appealing to the council of state—"conseil d'état."

7th. Executive departments. The heads of departments have a judicial jurisdiction of their own over matters pertaining to their departments, but subject to an appeal to the "conseil d'état." If
10 the decision of the department is not appealed from, it is obligatory, and may be enforced as a judgment. In each department there is a bureau of claims of permanent organization, which first examines the case; it is then carried to the minister, from whose decision there is an appeal to the council of state—"conseil d'état."

8th. The "conseil d'état" contains a "section du contentieux," before which parties appear by their counsel. The members of the court confer, after they have heard the case argued, and their decision is rendered in public, and recorded. Its judgments are enforced by a decree emanating from the head of the state. He must consent to the same. But the witness testified that there was no instances that he was aware of that such decree was refused.

9th. Suits may be brought by an individual against the French government in the tribuneaux civils, and in the tribuneaux administratifs, according to the nature of the suit, and the government be brought into court by service of process, as follows: on—

1. The Emperor, when it is a question of lands or eminent domain, in the person or at the residence of the prefect of the department, where sits the court before which the action must be brought in the first instance.

2. The summons, or a copy, left at the office of the treasury.

11 3rd. The treasury, in the person or the office of its agent. The public departments or establishments in their offices, in the places where the seat of administration is fixed. In other places, in the person or at the office of their representation.

4th. The Emperor, if it is lands, in the person of the "procureur imperiale d'arrondissement."

10th. An individual claiming money due him in the treasury department, may summon directly the minister of finance to appear before the court of Paris, if it is in Paris; before the tribunal of the district, and then bring his suit against him as against anybody else, except that the procureur imperiale argues a case brought against the government. And for the bringing of such suit no authorization of any legal office is necessary.

In France, foreigners may sue the French government, as French citizens may, and no distinction as to the right or manner of sueing is made between them, except that in certain cases the foreigner is required to give security—judicatum salvi.

That the claimant is entitled to recover against the United States the

net proceeds of said ninety-five bales of cotton, amounting to the sum of ($17,869 95) seventeen thousand eight hundred and sixty-nine dollars and ninety-five cents, for which judgment is rendered.

12 The civil courts of France, as contradistinguished from criminal courts, consist of two orders of jurisdiction: one is called civil courts, another is called administrative courts; one which culminates in what is called cour de cassation, and the other in what is known as conseil d'état.

Parties are brought before the "tribuneaux administratifs" by service of process, as follows:

"1st. The Emperor, when it is a question of lands or eminent domain, in the person or at the residence of the prefect of the department, where sits the court before which the action must be brought in the first instance.

"2nd. The summons, or a copy, left at the office of the treasury.

"3rd. The treasury in the person or office of its agent. The public departments or establishments, in their offices in the places where the seat of administration is fixed. In other places, in the person or at the office of their representatives.

"4th. The Emperor, if it is lands, in the person of the procureur imperiale d'arrondissement."

And the court find as a conclusion of law, that the French government accords to citizens of the United States the right to prosecute claims against such government in its courts.

By the court.

13 The defendants also requested the court to make the following findings, which was refused, as p'r Schedule B:

1. The right to sue the French government in a French court is only derived from general principles, and is not matter of positive law.

2. The only tribunals in France before or in which any sort of action or proceedings can be had against the French sovereign, are the "tribuneaux administratifs," (administrative tribunals.)

3. The action of an American citizen for indemnity due him arising out of a contract made with, or supplies furnished to the French government, should be brought before the administrative tribunals, ("tribuneaux administratifs.") As to the administrative tribunal before which the suit should be brought, the jurisdiction varies according to the nature of the cause. It is either before the "conseils de préfecture," or before the "ministers of state" in the first instance, and always in appeal before the "conseil d'état statuant au contentieux."

4. The "contentieux administratif" exists where there is a specified claim distinctly set forth, be it just or without foundation, under color of private right, which right it is claimed has been impaired by an act of the administration.

14 5. One characteristic of the litigation of the administrative tribunals is, that it is always connected with the public interest in all cases, whatever be the nature of the question involved. The "jurisdiction contentieuse" has for its object the examination, the consideration, and the reparation, through its decisions, of all wrongs which the voluntary jurisdiction [of the administration] has caused to private rights.

6. The jurisdiction of the "tribuneaux administratifs" extends over the following subjects only:

1st. Public domains, including encroachments, usurpations, waste of roads belonging to highways, and the encroachments and usurpations only on country roads, as well as servitudes and works of public utility.

2nd. Grants of lands belonging to the public domain made for executive departments or for executive services.

3rd. Mines; the withdrawal of the privilege of working the same, forfeiture of the grant, and other questions relating thereto.

4th. Draining swamp lands.

5th. Conventions and contracts for supplies made between the state and individuals.

6th. Ferries, boats, and leases for the right of tolls. The other questions arising from the other classes of administrative leases belong to the civil courts.

7th. Petitions for the entire release or partial reduction of direct taxes.

8th. Pensions due by the state, and liabilities of the same.

15 9th. Public accounts.

10th. Electoral validity, as far as it relates to the formation of the councils of "departments," "arrondissement," and of "communes," in the violation of the rules prescribed by law to electoral assemblies.

11th. Interpretation of administrative decisions. There are also other matters which belong to the administrative jurisdiction; they have been defined respectively by laws, the details of which do not properly pertain to the above questions.

7. The administrative tribunal, according to the nature of the cause, is either before the "conseile de préfecture," or before the ministers of state. It is either before the "conseils de préfecture" or before the "ministers of state" in the first instance, and always in appeal before the "conseil d'état statuant au contentieux." As to ministers of state, the reclamations which give rise to these administrative acts of a judicial nature may be brought sometimes under "voie (jurisdiction) gracieuse," or on application to the discretionary power of the officer, (Birche Dist., Comp. Admin., § 1, art. 14,) and sometimes under the "voie (jurisdiction) contentieuse," which is after the claim has assumed a positive and decided shape, and is properly submitted.—(Ibid.) Application under the former jurisdiction is simply a petition addressed to the executive, to modify or retract one of its decisions. It is rejected or

16 admitted, according to the will and judgment of the head of the department, and the decision has not the effect or character of an act of jurisdiction—that is, it carries no judgment; but applications made under the latter jurisdiction result in actual judgments.

8. The administrative power is manifested sometimes in its regulations, and sometimes in administering the public business. In either case, its regulations or its acts may operate injuriously on private interests, which ought then to be admitted to present their claims, (réclamer,) and these claims (réclamations) are considered by the administration itself, which admits or rejects them, according as they appear to be well or ill founded. Thus the administrative functions are of two sorts. The one set consists in acts of authority as to particulars or generals, the other in considering and determining the reclamations which arise out of these acts of authority. * * * It appears, then, that the administration is divided into pure administration, and administration on disputed points.

9th. "Conseils de préfecture." The administration of each "department" (political division of France) is organized as follows: There is a prefect, and by him sits a "conseil de préfecture," the members of which are appointed by the executive. These "conseils de préfecture" are the competent tribunals which decide in first instance, mostly on the lawsuits which are not submitted to the civil courts. Their juris-

diction has been defined by the law of February 17th, (28 Pluviose, an. VIII.)

17 10th. This law establishes the classes of reclamations which are submitted to that jurisdiction. Most of them will be found in my answer to the 4th interrogatory. In cases which are decided by the "conseil de préfecture" there is almost always the possibility of appealing to the council of state.

SCHEDULE B.

The findings, as above requested by d'f'ts, were disallowed by the court as follows:

The first. Because not proved and immaterial, as the right is recognized and provided for by positive law.

Second. Because not proved.

Third. Because, relating to contract with the French government, it is irrelevant.

Fourth. Because not proved. No witness mentions "the contentieux administratifs."

Fifth. Because not proved. No witness mentions "the jurisdiction contentieuse."

Sixth. Because not proved.

Seventh. Because not proved. The evidence is that there are several classes of "tribuneaux administratifs," of which the "conseil de préfecture" and the "executive departments" are specified as "the two main classes." The book cited was not found.

Eighth. Because not proved and irrelevant.

Ninth. Because found by the court.

Tenth. Because incorrectly stated, & found by the court so far as material.

(Indorsed:) 2805. Maximilian A. Dauphine vs. The United States.

18 In the Court of Claims.

MAXIMILIAN A. DAUPHIN
vs.
THE UNITED STATES. } No. 2805.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for the defendants for the allowance of an appeal, as filed in the clerk's office 29 November, 1870, and of the order of the court of 19 December, 1870, allowing the same; of the finding of the facts, and conclusions on said facts, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 30th day of December, 1870.

[SEAL.] JOHN RANDOLPH.
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 455. The United States, appellants, vs. Maximilian A. Dauphin. Court of Claims. Filed 30th December, 1870.